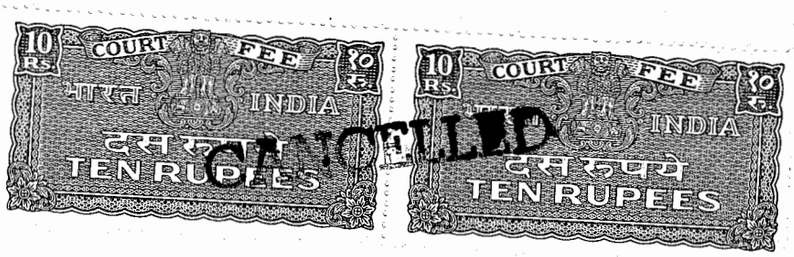

(3)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR (C.G.)

W.P. No. 1336 /2003

Petitioners : 1. RAM KISHORE DUBEY
S/o Shri Ragholal Dubey
aged about 35 years,
Upper Division Clerk,

2. MOTILAL VERMA,
S/o Shri Ram Palak Verma,
Aged about 50 years
Lower Division Clerk,

3. CHINTA RAM SAHU,
aged about 40 years,
Helper

All employees of
Chhattisgarh Adhorachana Vikas
Nigam, (Parivahan Vibhag),
Shashtri Chowk, Raipur (C.G.)

P. R. No. 1165/03
Presented by Shri Y.K. Tamaskar
dated 23.04.03

VERSUS

Respondents : 1. STATE OF CHHATTISGARH,
Through : Secretary,
Transport Department,
Govt. of Chhattisgarh,
Mantralaya, D.K.S. Bhawan,
G.E. Road, Raipur (C.G.)

(4)

Attested
A.K. 17/9/04

amended as per order

2. Chhattisgarh Adhorachana Vikas Nigam, (Parivahan Vibhag) Shashtri Chowk, Raipur (C.G.) Through : Managing Director Madhya-Pradesh State Road-Corporation M.P. Head office M.P.R.T. Nagar Gopal Bhopal M.P.

3. ~~The Collector, Bilaspur (C.G.)~~

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 1336 of 2003

Petitioner — Ram Kishore Dubey & others

Versus

Respondents — State of Chhattisgarh & others

Post for order on 2nd May, 2006.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 1336 of 2003

Petitioner Ram Kishore Dubey & others

Versus

Respondents State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri V. G. Tamaskar, Advocate for the petitioner.

Shri V. V. S. Moorthy, Deputy Advocate General with Smt. Anju Ahuja, Deputy Govt. Advocate for the Respondent No.1.

Shri Ashok Das Vaishnav, Advocate for the Respondent No.2.

Shri Sanjay Patel, Advocate for the Respondent No.3.

O R D E R

(2nd May, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioners, who were employed as Upper Division Clerk, Lower Division Clerk and Helper, respectively, with the Madhya Pradesh State Road Transport Corporation (MPSRTC), were posted at Bilaspur, within the territorial jurisdiction of the State of Chattisgarh. Vide order dated 13.6.2001(Annexure P/6) issue by the Financial Advisor, M.P.S.R.T.C. Head Quarter Habeebgunj, Bhopal the petitioners No. 1 was transferred from Bilaspur to Jagdalpur and petitioner No.2 was transferred from Bilaspur to Rajnandgaon. The petitioner No.3 was transferred from Bilaspur to Jagdalpur vide order dated 12.6.2001 (Annexure P/7) passed by the Assistant Labour and Personnel Officer, M.P.S.R.T.C. Head Quarter, Habeebgunj, Bhopal. The petitioners did not comply with the aforesaid transfer orders on the ground that the petitioners were not paid any transfer

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allowance, S.A. and arrears of salary. Being aggrieved the petitioners filed a writ petition being W. P. No. 1226/2001 for the following reliefs.

"(i) The petitioners pray that the Hon'ble Court may be pleased to direct the respondents to take action against the delinquent employees or to accord permission to the petitioners, to take legal action against them, so that the law may be vindicated and the exploitation of the people, at the hands of unscrupulous employees is put to a halt.

(ii) Any other relief fit and proper, in the circumstances of the case may also be kindly granted."

2. That Writ Petition No. 1226/2001 was dismissed on 30.10.2001 for non-prosecution. The petition was thereafter restored vide order dated 5.4.2003 passed in M.C.C.No. 45/2002. Thereafter, the petition was again dismissed for non-prosecution on 3.3.2006. The petitioners did not get the earlier petition being W.P.No. 1226/2001 restored as yet within limitation period and the same attained finality.

3. The petitioners have filed this petition on 23.4.2003 for the following reliefs:-

"(i) That the Hon'ble Court be pleased to direct the respondents 1 and 2 to release wages of the petitioners with interest as detailed in paras 5.2 and 5.4 of the petition by issuing a writ of mandamus.

(ii) That the Hon'ble Court be pleased to issue any other writ or writs, order or orders, direction or directions deemed fit in the interest of justice.

By amendment order dated 23.1.2006 the prayer clause 7(iii), seeking writ of certiorari for quashing the order dated 5.9.2001 (Annexure R-2/1), was added to the petition, as under:

"7(iii) That, the Hon'ble Court be pleased to quash Annexure R-2/1 as being illegal, malicious, without authority

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and contemptuous by issuing a writ of Certiorari with all consequential benefits."

4. The petitioners have not challenged the validity of the transfer orders dated 13.6.2001 (Annexure P/6) and 12.6.2001 (Annexure P/7). However, in the rejoinder the petitioners have questioned the validity of the said transfer orders in the averments without seeking any relief against the said transfer orders, in the prayer clause.

5. Learned counsel appearing for the petitioners submitted that since the transfer orders were passed by incompetent officers, thus the same were void and non-est. It is, therefore, not necessary to impugn the same. It was further submitted that the petitioners were not obliged to comply with the void and non-est order by going to Jagdalpur and Rajnandgaon, respectively, and joining therein. The petitioners have all the time reported at Bilaspur and the petitioners were restrained from working in the Bilaspur depot by the Respondent No.2.

6. The petitioners further submitted that according to the notification dated 27.12.2002 (Annexure R-2/2) passed by the Ministry of Road, Transport and High Way, Govt. of India, the petitioners became employee of the respondent No.3 on dissolution of the original M.P.S.R.T.C. Learned counsel further submitted that the petitioners are entitled to entire wages with interest w.e.f. the date of their transfer i.e. 13.6.2001 in case of the petitioners No. 1 and 2 and 12.6.2001 in case of the petitioner No.3, till date as per the calculations made in para 5.2 of the petition.

7. With regard to the dismissal of the petitioner No.2 from service by order dated 5.9.2001, learned counsel for the petitioner

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submitted that the impugned order dated 5.9.2001 is bad in law, as the petitioner No.2 was dismissed from service on the ground that the petitioner No.2 had not complied with the transfer order dated 13.6.2001.

8. Shri Ashok Das Vaishnav, learned counsel appearing for the Respondent No.2, on the contrary, submitted that the petitioners were transferred by the Respondent No.3 M.P.S.R.T.C. The petitioners have neither challenged the transfer order nor complied with the orders, hence, the transfer orders have attained finality and the petitioners are not entitled to any wages on the principle of 'no work no pay'. It was further submitted that the respondent No.2 came into existence after dissolution of the old M. P. State Road Transport Corporation by notification dated 27.12.2002, issued by the Union of India on the provisions of the Madhya Pradesh Reorganization Act, 2000.

9. Even if, the petitioners succeed, the respondent No.2 is not liable to make any payment of back wages etc. It was further submitted that the petitioner No.2 was relieved vide order 18.6.2001 to join at the transferred place i.e. Rajnandgaon depot. The petitioner No.2 did not comply with the transfer order and remained continuously absent from duty. Therefore, after holding a preliminary enquiry the petitioner No.2 was dismissed from service by order dated 5.9.2001. According to the learned counsel for the Respondent No.2, no proper enquiry was necessary as notice was sent to the petitioner No.2 by registered post with regard to the proposed enquiry which was not attended to by the petitioner No.2. The notice was also

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published in the "Dainik Bhaskar" newspaper on 31.8.2001. The petitioner No.2 remained absent throughout and on the basis of the documentary evidence, the petitioner No.2 was dismissed from service.

10. Shri Sanjay Patel, learned counsel appearing for the present M.P.S.R.T.C. adopted the submissions made by learned counsel appearing for the Respondent No.2 and further submitted that the Financial Advisor at the head quarter at Bhopal was the competent officer for transferring the petitioners No. 1 and 2 and the Assistant Labour and Personnel Officer at the head quarter at Bhopal was competent officer for transferring the petitioner No.3. The submission on behalf of the respondent No.3 remained unsubstantiated by the documents. On the contrary, learned counsel appearing for the petitioners has produced a document namely the order issued by the Managing Director with regard to the administrative control of the employees, wherein it was clearly provided that the administrative control would vest in Managing Director at the head quarter, in Deputy General Manager (Yata)/Divisional Manager at the divisional head quarter, and in the depot this would remain with the Senior Depot Manager/Depot Manager for the control and administrative action against the officers and employees.

11. After having heard learned counsel for the parties and having perused the writ petition, return and the documents appended thereto, it is clearly established that the petitioners have themselves decided that the transfer orders dated 13.6.2001 and 12.6.2001 are void and accordingly they did not proceed to

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join at the new place of posting at Jagdalpur and Rajnandgaon. The averments made by the petitioners that the transfer orders could not be complied with by the petitioners on account of the fact that the petitioners were not paid T.A., S.A. and arrears of salary in advance, is frivolous and cannot be countenanced on the simple ground that the financial claims of T.A., S.A. and arrears of salary is not a pre-condition to comply with the transfer orders. The petitioners could have claimed the above stated amounts after joining the new place of posting. I have carefully gone through the order dated 2.9.1999 (Annexure P/8) passed by the Managing Director –Respondent No.2 which provides for administrative control with certain officers namely at head quarter level, the Managing Director was held as competent officer as controlling and disciplinary authority, at divisional level, the Deputy General Manager (yata) and Divisional Manager and at depot. level Senior Depot Manager/Depot Manager were held competent officers for limited purpose of control and administrative action.

12. In the case at hand, the petitioners were transferred from one division to other division and in that event neither the Deputy General Manager(yata)-Divisional Manager nor the Senior Depot Manager/Depot Manager can be held competent officers. The head quarter alone appears to be the competent office for transferring employees working in one division to another division. Even otherwise the order dated 2.9.1999 (Annexure P/8) does not seem to be the proper order to determine as to who is the competent authority for transferring an officer/employee from one division to other division. Hence,

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the submission of the petitioner that the orders were void and non-est, is not accepted. It is well established principle of law that even a void order needs to be set-aside by a superior authority or superior Court. The petitioners, having not challenged the transfer orders on the ground the same are void and non-est cannot be relieved from the responsibility of obeying the transfer orders passed by the senior officers of head quarter at Bhopal.

13. The reliance of the learned counsel for the petitioner in the decision of the Supreme Court in the case of **Dr. Ramesh Chandra Tyagi Vs. Union of India & others** {(1994) 2 S.C.C. 416} is not applicable to the facts of the present case as in the case of **Dr. Ramesh Chandra Tyagi** (supra) the petitioner had challenged the transfer order and the same was declared as void and non-est in the eyes of law by the Court. In the present case the petitioners have not challenged the transfer orders and took the said orders as void and non-est on their own.

14. In the case of **Rafique Bibi (dead) by LRS. Vs. Sayed Waliuddin (ead) by LRS. And others** {(2004) 1 S.C.C. 287} the Supreme Court in para 8 observed as under:-

> "8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity or procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court

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of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

15. The Supreme Court in the case of **Balvant N. Viswamitra & others Vs. Yadav Sadashiv Mule (dead) through LRS. & others** { (2004) 8 S.C.C. 706} has observed in paragraphs 9 and 20 as under:-

> "9. The main question which arises for our consideration is whether the decree passed by the trial court can be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."
>
> "20. In our considered opinion, such a decree, by no stretch of imagination, can be described a nullity. If the decree is not null and void, as per settled law, appropriate proceedings will have to be taken by the persons aggrieved by such decree."

16. In regard to the dismissal of the petitioner No.2 vide order dated 5.9.2001 (Annexure R-2/1), it cannot be held that the impugned order dated 5.9.2001 dismissing the petitioner from service is bad in law. On perusal of the order dated 5.9.2001 it is clear that the petitioner No.2 was given proper notice by registered post at his official address and thereafter by

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publication in the newspaper on 31.8.2001. The petitioner No.2, it appears, has deliberately neither filed any reply, nor participated in the enquiry, thus the petitioner cannot be permitted to argue that the order was passed without affording proper opportunity of hearing. It is well settled principle of law that if the delinquent employee fails to submit his reply despite the notice and further fails to participate in the departmental proceedings after the notice, the enquiry cannot be held as bad on the ground of being ex-parte or without affording an opportunity of hearing. Hence, the impugned order dated 5.9.2001 whereby the services of the petitioner No.2 has been dismissed, is legal and valid and no interference with the same is warranted.

17. For the reasons stated above this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur